

**ORIGINAL**

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**JUL 21 2014**

SEAN F. McAVOY, CLERK  
DEPUTY  
SPOKANE, WASHINGTON

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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF WASHINGTON

10  
11 UNITED STATES OF AMERICA,

14-CR-00020-JLQ

12  
13  
14 vs.

UNSUPERVISED  
PRE-TRIAL DIVERSION  
AGREEMENT

15  
16 MICHAEL JOE SUBLIE,

17  
18 Defendant.  
19  
20

21 United States of America, by and through Michael C. Ormsby, United States  
22 Attorney, Tyler H.L. Tornabene, Assistant United States Attorney for the United  
23 States Attorney's Office for the Eastern District of Washington, and Defendant  
24 MICHAEL JOE SUBLIE, and the Defendant's counsel, Roger Peven, agree to the  
25 following Unsupervised Pre-Trial Diversion Agreement ("Agreement"). The  
26 Defendant is charged by Amended Information with Unreasonable Noise, in  
27 violation of 36 CFR 2.10(b)(4). The Defendant understands that Unreasonable  
28 Noise, in violation of 36 CFR 2.10(b)(4), is a Class B Misdemeanor that carries

Unsupervised Pre-Trial Diversion Agreement - 1

1 with it a statutory maximum penalty of incarceration not to exceed six (6) months  
2 and/or a \$5,000 fine.

3 The United States and the Defendant agree that this case shall be continued  
4 for six months, until December 29, 2014, and thereafter dismissed with prejudice,  
5 upon motion by the United States, provided the Defendant abides by all the  
6 conditions and requirements herein outlined. The United States and the Defendant  
7 agree that upon entry of this Agreement this Court should dismiss the currently  
8 pending charges in the Indictment without prejudice and that the United States will  
9 so move. The United States and the Defendant further agree that, after December  
10 29, 2014, upon verification that the Defendant has abided by all the conditions and  
11 requirements herein outlined, the United States shall move that the charges in the  
12 Indictment be dismissed with prejudice.

13 ELEMENTS OF THE OFFENSE

14 The United States and the Defendant agree that in order to convict the  
15 Defendant of 36 CFR 2.10(b)(4), in violation of Unreasonable Noise, as charged in  
16 the Amended Information the United States would have to prove beyond a  
17 reasonable doubt the following elements:

- 18 (a). That the Defendant, MICHAEL JOE SUBLIE, while in the  
19 Eastern District of Washington;  
20 (b). did create or sustain unreasonable noise;  
21 (c). between the hours of 10:00p.m. and 6:00 a.m.;  
22 (d). considering the nature and purpose of the actor's conduct,  
23 impact on park users, location, and other factors which would  
24 govern the conduct of a reasonably prudent person under the  
25 circumstances.

## FACTUAL BACKGROUND

The United States and the Defendant stipulate and agree that the following facts are truthful and accurate and form a sufficient basis for a finding of guilt under 36 CFR 2.10(b)(4); that the United States could prove these facts beyond a reasonable doubt at trial; and that these facts can be used as a basis for making findings and entry of judgment per the terms of this Agreement.

On or about September 14, 2013, shortly after 10:00 PM, National Park Service Rangers Matthew Phillipson and Joshua Wentz, were conducting patrol activities at the Kettle River Campground in Ferry County, Washington, in the Eastern District of Washington. During their patrol, the Rangers identified loud music coming from a houseboat moored at the beach. The boat was named "Strong Spirits," and was registered to the Defendant.

The music coming from the "Strong Spirits" at that time was sustained by the Defendant. The music coming from the "Strong Spirits" at that time was unreasonable noise considering the nature and purpose of the Defendant's conduct, impact on park users, location, and other factors which would govern the conduct of a reasonably prudent person under the circumstances. In this manner, the Defendant violated 36 CFR 2.10(b)(4).

## ACCEPTANCE OF PRE-TRIAL DIVERSION AND

### STIPULATION OF FACTS

The Defendant hereby:

1. Accepts and agrees to pursue and complete the terms and conditions of this Unsupervised Pre-Trial Diversion Agreement ("Agreement");
2. Understands that if he fails or neglects to comply with any part of the terms and conditions of the Agreement, then the Court will hold a hearing to

1 determine whether judgment should be entered as charged for Unreasonable Noise  
2 in violation of 36 CFR 2.10(b)(4). After the hearing, the Court will either order  
3 that the Defendant continue with the conditions of his pre-trial diversion, order  
4 additional conditions, or be removed from pre-trial diversion and enter judgment  
5 on the charge.

6 3. Agrees that if the Court revokes the order granting this pre-trial diversion,  
7 the facts from the Factual Background above will be admissible as evidence to be  
8 used to support a finding of guilt when the Court enters judgment. The Defendant  
9 understands that by agreeing to this process, he is giving up certain Constitutional  
10 rights. He specifically acknowledges that he is giving up the right to a trial, the  
11 right to testify or not to testify, the right to question witnesses, the right to call  
12 witnesses in his own behalf, and the right to present evidence or a defense;

13 4. Understands that he is entitled to a trial that would determine whether the  
14 United States could prove him guilty of the charge of Unreasonable Noise, in  
15 violation of 36 CFR 2.10(b)(4), beyond a reasonable doubt. He does hereby,  
16 voluntarily and with knowledge of the above rights, waive his right to a trial of the  
17 charge of Unreasonable Noise, in violation of 36 CFR 2.10(b)(4), by the Court  
18 pursuant to paragraph three (3) above;

19 5. Agrees to report any potential violation of the conditions listed below to  
20 the United States Attorney's Office for the Eastern District of Washington through  
21 his attorney, Roger Peven, within one (1) business day of the potential violation.

22 6. The Defendant waives any claim against the United States Attorney's  
23 Office for the Eastern District of Washington, or any employee thereof acting in  
24 the course and scope of his or her employment, under the Hyde Amendment, 18  
25 U.S.C. § 3006A (Statutory Note), for attorney's fees and other litigation expenses

1 arising out of the investigation or prosecution of the matters alleged in the  
2 Indictment or Amended Information.

3 7. The United States and the Defendant acknowledge that this Agreement  
4 constitutes the entire agreement between the United States and the Defendant, and  
5 no other promises, agreements, or conditions exist between the United States and  
6 the Defendant concerning the resolution of the case. This Agreement is binding  
7 only upon the United States Attorney's Office for the Eastern District of  
8 Washington, and cannot bind other federal, state or local authorities. The United  
9 States and the Defendant agree that this Agreement cannot be modified except in a  
10 writing that is signed by the United States and the Defendant.

11 CONDITIONS OF UNSUPERVISED PRE-TRIAL DIVERSION

12 The Defendant must abide by the following conditions and requirements:

13 1. The Defendant shall pay a fine of \$100.00 to the Clerk of Court within  
14 five (5) business days of the entry of this Agreement.

15 2. The Defendant shall not violate nor be charged with or convicted of any  
16 criminal violations under federal, state, or local law before this cause is dismissed  
17 without prejudice, or judgment is entered, per the terms of this Agreement. Civil  
18 and Non-Criminal Traffic Infraction violations will not constitute a violation of  
19 this Agreement.

20 If the Defendant complies with all the obligations mentioned above, no  
21 prosecution for the conduct set out in the Factual Background section of this  
22 Agreement will be instituted in the Eastern District of Washington and the United  
23 States agrees to dismiss these charges.

24 Should there be a violation of the terms of this Agreement, however, and the  
25 Agreement is revoked, a conviction for the charged offense of Unreasonable Noise,

1 in violation of 36 CFR 2.10(b)(4), may be imposed pursuant to the procedures  
2 outlined herein. If a conviction occurs, the Defendant understands he will be  
3 subject to a sentencing which may include up to six months imprisonment and/or a  
4 \$5,000 fine.

5 ADVICE AND ACKNOWLEDGMENT OF DEFENDANT'S RIGHTS

6 I, MICHAEL JOE SUBLIE, understand and acknowledge I have the  
7 following rights:

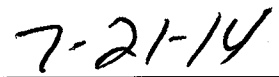
- 8 1. The right to a speedy and public trial in the District where the crime is  
9 alleged to have been committed;
- 10 2. The right at trial to question witnesses who testify against me;
- 11 3. The right at trial to call witnesses to testify for me;
- 12 4. The right to present evidence and a defense;
- 13 5. The right to appeal a judgment of guilt and any resulting sentence.

14 By entering into this Agreement I understand that I am knowingly,  
15 intelligently, and voluntarily, waiving these rights. I further understand that by  
16 continuing these charges until December 29, 2014, I am agreeing to follow the  
17 procedures outlined in this Agreement.

18 I, MICHAEL JOE SUBLIE, hereby state that I have read this document in  
19 its entirety. I understand the conditions of my pre-trial diversion and agree that I  
20 will comply with those conditions.

21  
22   
23 \_\_\_\_\_

24 MICHAEL JOE SUBLIE  
25 Defendant  
26

  
\_\_\_\_\_

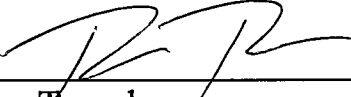
Date



Roger Peven  
Attorney for the Defendant

7-21-14

Date



Tyler Tornabene  
Assistant United States Attorney

7-21-14

Date